

provider. We recognize that the BOCs may have an incentive to misallocate the costs of local telephone affiliate interLATA services.

FME27. 47 U.S.C. § 272(b)(1).

FME28. 47 U.S.C. § 272(b)(1).

FME29. 47 U.S.C. § 272(b)(1).

FME30. 47 U.S.C. § 272(g)(1), the results of such audits must be submitted to the Commission and the state commission in each State in which the BOC provides service, which shall make such results available for public inspection. Tel. # 472-1022.

FME31. As our March 15, 1996 Comments at 20; Bell Atlantic Aug. 25, 1996 Comments at 17; see also BellTel Aug. 15, 1996 Comments at 56.

FME32. Non-Broadcasting Safeguards Order at § 138. We noted that prohibiting joint ownership of common value switching facilities would ensure that an affiliate may obtain any such facilities pursuant to the arm's length requirements of section 172(b)(1), thereby facilitating monitoring and enforcement of the section 272 requirements. Tel. at ¶ 103.

FME33. Tel. at ¶ 158. We recommended, however, consistency with these requirements and those established pursuant to sections 172(b)(1) and 172(c)(1), & section 272, that interentity negotiations with an affiliated BOC on an arm's length and non-interfering basis to obtain transmission and switching facilities, to arrange for utilization of facilities, and to provide or to obtain services such as administrative and marketing services. Tel. We also clarified that section 272(b)(1) does not preclude a BOC or a section 172 affiliate from providing telecommunications services to non-affiliates, so long as each entity maintains itself, or otherwise ~~never~~ ~~ever~~ ~~and~~ ~~not~~ ~~with~~ ~~any~~ third party, the operating, installation, and maintenance functions associated with the Tel. Tel. Thus no one or company can be carrying on business with the BOC. Tel. at ¶ 154.

FME34. Bell Atlantic Aug. 15, 1996 Comments at 52.

FME35. 47 U.S.C. § 272(b)(5).

FME36. Accounting Safeguards Order at ¶ 122. This information also must be made available for public inspection at the principal place of business of the BOC. Tel.

FME37. Amendment of Revision 64-702 of the Commission's Rules and Regulations, CC Docket No. 86-228, BOC Safeguards Order, 6 FCC Rcd 1571, 1536, ¶ 53 (1991), vacated in part and remanded on other grounds, California v. FCC, 33 F.3d 919 (D.C. Cir. 1994), cert. denied, 115 L. Ed. 2d 1427 (1995).

FME38. The X-factor is a component of the price cap formula that is used to adjust

1997 WL 193831 (F.C.C.), 12 F.C.C.R. 15,756, 12 FCC Rcd. 15,756, 7 Communications Reg. (P&F) 768  
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the price cap index for local access services each year to account for changes in telephone companies' costs per unit of output.

FM289. First Report Aug. 15, 1996 Comments at 17-18. Similarly, the possibility of future deregulation of price cap levels or cut-of-hand filings also implies that price cap regulation does not fully cover the link between regulated costs and prices. See id. C.F.R. § 60.48(d)(1)(f).

-FM301. C&I West is the only BOC currently subject to a sharing option. Data based on 1996 Annual Access Tariff Filings filed on April 2, 1995. See also DTA Aug. 15, 1996 Comments, id., at 8. We also note that the Commission has sought comment on whether the sharing option should be eliminated. Price Cap Performance Review for Local Exchange Carriers, Fourth Further Notice of Proposed Rulemaking, 10 FCC Rcd. 13,656, 13,670 (1995). Also, in the Access Charge Reform NPRM, we sought comment on whether we should reinitialize price cap indices and increase the X-factor. See Access Charge Reform: Price Cap Performance Review for Local Exchange Carriers: Transport Rate Structure and Pricing: Usage of the Public Switched Network by Information Services and Internet Access Providers, CC Docket Nos. 94-262, 94-1, 94-213, 96-163, Notice of Proposed Rulemaking, Third Report and Order and Waiver of Long Run FCC No. 95-33, at ¶¶ 223-25 (rel. Dec. 24, 1996) (Access Charge Reform Docket).

FM301. See accompanying Subsidy Order at ¶ 176.

FM291. See National Association of Regulatory Utility Commissioners, Utility Regulatory Policy in the United States and Canada: Compilation 1995-1996 at 233, 258 (1997).

FM293. See Japan Shimbun v. Toshiba Corp., 975 U.S. 574, 759 (1996) ("Predatory pricing schemes are rarely legal, and even more rarely successful.") See also Bell Atlantic Comments at 16; Second Aug. 15, 1996 Comments at ¶ 17-18; Ameritech Aug. 15, 1996 Comments at 20; U.S. Tele. Aug. 15, 1996 Comments at 10; PSC Aug. 15, 1996 Comments at 45-47.

FM294. AT&T Relabelization Order, 11 FCC Rcd. 1704, ¶ 5 ¶ 60-61.

FM295. We recognize that action taken in concert by two or more BOCs could have a more significant impact on cellular/PA competitors, but believe that the antitrust laws and our enforcement process will sufficiently limit the risk of such concerted activity. Non-Accounting Subsidy Order at ¶ 70.

FM296. See, e.g., Brooks Group Ltd. v. Philip Morris Tobacco Co., 509 U.S. 221, 224 (1991) ("Recklessness is the ultimate object of an unlawful predatory pricing scheme; it is the means by which a predator profits from predation.")

FM297. Dan et al. Spulber, Deregulating Telecommunications 12 Tele. J. of Bus., 20, 40 (1996).

FM298. AT&T Aug. 10, 1996 Reply at 35; 207 Aug. 30, 1996 Reply at 25.

1997 WL 193501 (FCC), 12 FCC R. 15,756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 768  
(Publication page references are not available for this document.)

FB299. DDC Aug. 30, 1996 Reply at 27.

FM300. AT&T Aug. 30, 1996 Reply at 70.

FM301. DDC Aug. 30, 1996 Reply at 25.

FM302. Ameritech Aug. 15, 1996 Comments at 53; Bell Atlantic Aug. 15, 1996 Comments at 15-16; Pacific Aug. 15, 1996 Comments at 55.

-3562. See, e.g., Ameritech Aug. 15, 1996 Comments at 32-33; Bell Atlantic Aug. 15, 1996 Comments at 17-18. Ameritech points to the cable television industry as an example of how the threat of imminent competition has forced firms to improve customer service immediately in recognition that they would lose market share quickly once competition arrives. Ameritech Aug. 15, 1996 Comments at 23.

FM303. Bell Atlantic Aug. 15, 1996 Comments at 24-25; Bell Atlantic Aug. 15, 1996 Comments at 17; Pacific Aug. 15, 1996 Comments at 60; SBC Aug. 15, 1996 Comments at 11-12; USPA Aug. 15, 1996 Comments at 40-50. USPA asserts that no commenter provided examples or even anecdotal evidence that unanticipated collective degradation of services is problematic. USPA Aug. 30, 1996 Reply at 28.

FM304. Ameritech Aug. 15, 1996 Comments at 26-27; Bell Atlantic Aug. 15, 1996 Comments at 17; Pacific Aug. 15, 1996 Comments at 58-59; SBC Aug. 15, 1996 Comments at 10-20; NYSEK Aug. 15, 1996 Comments at 52-57. Pacific claims that not only must the degraded quality of the RBOC interLATA affiliates' competitive local service be obvious to consumers, but many may also believe that the quality of the interLATA affiliated's service is better than anyone else's, which would negate a massive advertising campaign touting the interLATA affiliate's superior service. Bell Atlantic Aug. 15, 1996 Comments at 53.

FM305. Bell Atlantic Aug. 15, 1996 Comments at 26; SBC Aug. 15, 1996 Comments at 19-20.

FM306. Bell Atlantic Aug. 15, 1996 Comments at 18; USPA Aug. 15, 1996 Comments; Televerde RBOC at 11. See also Pacific Aug. 15, 1996 Comments at 59-60, 64-67; NYSEK Aug. 15, 1996 Comments at 56-57.

FM307. Pacific Aug. 15, 1996 Comments at 59. According to Pacific, it has competed with interexchange carriers in the provision of interLATA toll services and with enhanced services providers since the 1980s, and it has not been subject to complaints of discrimination for these services. Id.

FM308. See U.S. Excel Aug. 15, 1996 Comments at 9; Frontier Aug. 15, 1996 Comments at 8; Time Warner Aug. 30, 1996 Reply at 22-23; SBC Aug. 15, 1996 Reply at 26. See also USPA Comments at 20.

FM309. AT&T Aug. 30, 1996 Comments at 61.

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(Publication page references are not available for this document)

FN011. Time Warner Aug. 30, 1996 Reply at 74; BOC Aug. 30, 1996 Reply at 16.

FN012. Non-Accounting Safeguards 220M at ¶ 239.

FN013. Td.

FN014. Td.

FN015. AT&T, U.S. G.C. 272(a)(1).

FN016. Non-Accounting Safeguards Order at ¶ 252.

FN017. Non-Accounting Safeguards Order at ¶ 210. To reject the complainant's claim, the BOC may demonstrate, among other things, that rate differentials between the recommted affiliate and nonaffiliated entity reflect differences in cost, or that the ratemated entity expressly requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. Td.

FN018. Id. at ¶ 210.

FN019. AT&T, U.S. G.C. 272(a)(1).

FN020. Non-Accounting Safeguards Order at ¶ 239.

FN021. Id. at ¶ 201. In the Order, we sought further comment on specific information disclosure requirements that were proposed by AT&T in an ex parte letter filed after the official pleading cycle closed. Id. at ¶ 165.

FN022. Id. at ¶ 241.

FN023. AT&T, U.S. G.C. 272(a)(1).

FN024. AT&T, U.S. G.C. 272(a)(1).

FN025. Non-Accounting Safeguards Order at ¶ 256.

FN026. Time Warner ¶ 194.

FN027. Non-Accounting Safeguards order at ¶ 160. Section 272(b)(1) requires a BOC interLATA affiliate to conduct all transactions with the BOC on an arm's length basis so that such transactions reduced to writing and available for public inspection. AT&T, U.S. G.C. 272(b)(5).

1997 WL 193831 (FCC), 12 FCC R. 15,756; 12 FCC Rec. 15,756, 7 Communications Reg. (P&F) 768  
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FN318. Non-Accounting Safeguards Order at ¶ 165.

FN319. 47 U.S.C. § 271(d)(6).

FN320. 47 U.S.C. § 271(d)(6)(B).

FN321. Non-Accounting Safeguards Order at ¶ 333.

FN322. 47 U.S.C. § 271(d)(6)(B).

FN323. We are currently in late in a separate proceeding addressing the expanded complaint procedures mandated by this subsection as well as those mandated by other provisions in the 1996 Telecommunications Act. *Rules Governing Procedures to be Used in Filing Complaints and Appeals against Common Carriers*, US Docket No. 96-130, Release of Proposed Rulemaking, FCC Docket 96-130 (rel. ACM, 27, 1996).

FN324. Non-Accounting Safeguards Order at ¶ 345.

FN325. The complainant, however, will have the ultimate burden of persuasion throughout the proceeding; that is, to show that the preponderance of the evidence "swings" in his proceeding weight in his favor. *Id.*

FN326. See, id. ¶ 351. The presumption of lawfulness given to independent carrier rates are granted here as imagined in the context of complaints of ongoing violations of sections 1701(a) and 203(b), where any complaint must demonstrate that the defendant's rates and practices are "unjust and unreasonable." We found there a presumption of non-discriminatory service every carriage in this context of non-discriminatory violations of the conditions of InterAMA approval in section 1701(b), *part 10*, only given our interpretation of sections 203(e)(1) as an unqualified prohibition on discrimination. *Id.*

FN327. FCC Aug. 15, 1996 Comments at 48-51.

FN328. Although the advance tariff filing requirement might help detect certain types of price discrimination, the marginal benefit of such regulation would be outweighed by the burdens such regulation would impose, as discussed above. See *supra* ¶ 9, 102-30.

FN329. See AM Aug. 15, 1996 Comments at 65-66.

FN330. Cable Warner Aug. 30, 1996 Reply at 23.

FN331. See, e.g., America West Aug. 15, 1996 Comments at 30-31; PacTel Aug. 15, 1996 Comments at 62.

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(Publication page references are not available for this document.)

FN342. ~~Intercom Aug. 15, 1996~~ Comments at 30-31; ~~PacTel Aug. 15, 1996~~ Comments at 62; USPA Aug. 15, 1996 Comments at 50-51; ~~Hausman Aff.~~ at 12.

FN343. ~~PacTel Aug. 15, 1996~~ Comments at 61-62.

FN344. ~~PacTel Aug. 15, 1996~~ Comments at 62.

FN345. ~~Id.~~ at 31.

FN346. ~~Intercom Aug. 15, 1996~~ Comments at 57-58; NYNEA Aug. 20, 1996 Reply at 12.

FN347. ~~Intercom Aug. 15, 1996~~ Reply at 4.

FN348. ~~MCI Aug. 15, 1996~~ Comments at 61.

FN349. ~~Id.~~ at 54.

FN350. ~~MCI Aug. 15, 1996~~ Comments at 4; ~~MFS Aug. 20, 1996~~ Reply at 23-24.

FN351. ~~MFS Aug. 20, 1996~~ Reply at 25; ~~BTC Aug. 20, 1996~~ Reply at 35.

FN352. ~~MCI Aug. 15, 1996~~ Reply at 36-37.

FN353. ~~Intercom Aug. 15, 1996~~ Comments at 23-24.

FN354. ~~AT&T Aug. 15, 1996~~ Comments at 65; ~~Intercom Aug. 15, 1996~~ Comments at 66.

FN355. ~~MFS Aug. 15, 1996~~ Comments at 4-5.

FN356. ~~Intercom Aug. 15, 1996~~ Reply at 3-4.

FN357. ~~Id.~~ at 2.

FN358. ~~Id.~~

FN359. ~~Salt Atlantic Aug. 30, 1996~~ Reply at 20; ~~NYNEA Aug. 30, 1996~~ Reply at 30; see also ~~PacTel Aug. 30, 1996~~ Reply at 12; ~~USPA Aug. 15, 1996~~ Comments; ~~Hausman Aff.~~ at 10-13 (asserting that Intercom has worked well in California long distance markets, such as those in California).

FN360. Non-Accounting Ratecard(s) X-2RM at ¶ 143.

Similarly, access to information is often limited to those who have been granted authority to do so. This may be due to the fact that certain types of information are considered sensitive or confidential, while others are not. It may also be due to the fact that some individuals have more authority than others to access certain types of information. For example, a manager may have access to financial information, while an employee may not. This can lead to unequal treatment and discrimination based on access to information.

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<sup>1</sup>See also, *Administrative Law*, 2d ed., 1955, 20 messages, p. 31.

תביעה מטעם מינהל האיסוף והבקרה על דוח הבדיקה של מינהל האיסוף והבקרה

the BSC will take off if it can't find a way to make its business model more efficient.

Such a situation would be a major concern for the government, as it would likely result in significant political instability and social unrest.

TABLE I. THE ASSOCIATION OF SURVIVAL TIMES WITH SURVIVAL PROBABILITIES AND WITH THE PROPORTION OF RECOMBINANT CELLS

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193891. See DAT Aug. 30, 1996, Report at 17.

193891. Non-Accounting Safeguards: NURC at 9-145; DeafTel Aug. 25, 1996 Comments at 45-64 (noting that BellTel has lost significant market share in intralATA toll services and that Bell Atlantic and NYNEX have just gained significant market share in the provision of interLATA corridor services). We acknowledge, however, that there have been instances in which individual RBOCs may have not complied with our non-discriminatory safeguards in providing non-regulated services. See id. n. 254. See also AT&T Aug. 15, 1996 Comments at 37 (referring to the MobilityPlan attack).

193891. California v. FCC, 19 F.3d 921, 923 (9th Cir., 1994) (California III). In its Computer III decisions, the Commission removed the separate affiliate requirements applicable to AT&T and the RBOCs, provided that they complied with certain non-discriminatory safeguards intended to guarantee that they offered their regulated network services to competing enhanced service providers on an equal and non-discriminatory basis. The U.S. Court of Appeals for the Ninth Circuit rejected portions of the Commission's Computer III decisions in three separate decisions. Amendment of Section 64.702 of the Commission's Rules and Regulations, 60 Docket No. 86-1073, Phase I, 104 FCC 2d 1258 (1986) (Phase I Order), report, 3 FCC Rep. 3045 (1987) (Phase I Reconsideration Order); *Further Amends.*, 3 FCC Rep. 1135 (1988); *Second Supplemental Amends.*, 4 FCC Rep. 5927 (1989); Phase I Order and Phase I Reconsideration Order vacated, California v. FCC, 904 F.2d 1217 (9th Cir., 1990) (California III; Phase II); 3 FCC Rep. 1002 (1987) (Computer III Block III Order), report, 3 FCC Rep. 1150 (1988); California v. FCC, 904 F.2d 1221 (1990) (Phase II Order vacated, California II; RGS F.2d 1077 (9th Cir., 1990)); Computer III Remand Vacating, 4 FCC Rep. 7729 (1987); *Supplemental*, 4 FCC Rep. 329 (1992), pet. for review denied, California v. FCC, 4 F.3d 1105 (9th Cir., 1995); RBOC Safeguards Order, 6 FCC Rep. 151 (1991), vacated in part and remanded, California III, 29 F.3d 919 (9th Cir., 1994), cert. denied, 115 S. Ct. 2540 (1995).

193891. See MTT Aug. 15, 1996 Comments at 67.

193891. Section 272(f)(1) of the Communications Act provides that the RBOC safeguards set out in section 272(f), other than those prescribed in section 272(a), shall sunset three years after the date that the RBOC affiliate is authorized to provide interLATA telecommunications services unless the commission extends such three-year period by rule or order. We remain now general how competition will develop in local exchange markets nor can we determine at this time what accounting and non-accounting safeguards, if any, will be needed at that time. Accordingly, we recognize that it will be necessary for the Commission to determine what accounting and non-accounting safeguards, if any, are necessary and appropriate upon expiration of these section 272(f) safeguards subject to sunset, and whether RBOC interLATA affiliates should be classified as dominant or non-dominant in the provision of in-region, interLATA, longdistance telephone services.

193891. Non-Accounting Safeguards: NURC at 9-150; see also Market Entry and regulation of Foreign-affiliated Entities, 60 Docket No. 95-28, Report and Order, 12 FCC Rep. 3273, 3277 (1995) (Foreign Carrier Entry Order), recon. pending.

193891. Non-Accounting Safeguards: NURC at 9-151.

1997 WL 1903831 (F.C.C.), 12 FCC.R. 15,756; 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 765  
(Publication page references are not available for this document.)

FN394. See, e.g., AT&T Aug. 15, 1996 Comments at 60-67, n.29; BellSouth Aug. 15, 1996  
Comments at 35; NYNEX Aug. 15, 1996 Comments at 61; RBOC Aug. 15, 1996 Comments at  
2-3.

FN395. Pacific Aug. 15, 1996 Comments at 68; U.S. West Aug. 20, 1996 Reply at 21 n.85.  
According to PacTel, the international market is different from the domestic market  
in three respects: (1) the U.S. international telecommunications market is far more  
concentrated than the domestic market, with only a small number of facilities-based  
carriers; (2) while access costs are the major expense for domestic interLATA calls,  
access to satellite or fiber facilities are the largest single expense for  
international services; and (3) RBOCs are likely to procure most of their  
international facilities from consortiums led by AT&T. PacTel Aug. 15, 1996  
Comments at 68-69.

FN396. Pacific Aug. 15, 1996 Comments at 69. PacTel argues that this could be  
accomplished by beginning the process before similar 701 applications are filed or  
by streamlining any req'd permiss. section 214 filings w/POC :interLATA  
alliances. PacTel Aug. 15, 1996 Comments at 69.

FN397. RBOC Aug. 15, 1996 Comments at 58.

FN398. Id.

FN399. Id. at 60-69.

FN400. Id. at 54-55. See MCI Communications Corp., British Telecommunications plc:  
Joint Petition for Declaratory Ruling Concerning Section 210(b)(4) and (d) of the  
Communications Act of 1934, as amended, File No. T-8-E-93-013, Declaratory Ruling  
and Order, 8 FCC Rep 3850 (rel. July 21, 1994) (approving initial 20 percent  
investment).

FN401. PacTel Aug. 30, 1996 Reply at 36 (claiming that MCI's objection to  
regionally-nurtured traffic is contrary to its strategy and thus flatly  
unallowable); RBOC Aug. 30, 1996 Reply at 28-39 (contending that there is no  
evidence to suggest that existing rules adopted to handle the regulatory treatment  
of U.S. carriers on international routes are insufficient, and that such situations  
should, instead, be handled on a case-by-case basis); NYNEX Aug. 30, 1996 Reply at  
24-35 (asserting that additional conditions imposed on 701 work based on unique  
market drivers).

FN402. Non Accounting Safeguards Order at 5-58.

FN403. See AT&T Aug. 15, 1996 Comments at 66-67, n.58 (the ability and incentive of  
a RBOC to use its market power for the purpose of raising its rivals' costs in the  
long-distance market does not depend on whether its competitors are domestic or  
international); BellSouth Aug. 15, 1996 Comments at 40; NYNEX Aug. 15, 1996 Comments  
at 61.

FN404. See Universal Carrier Entry Order, 11 FCC Rep at 4917-20.

FN406. Section 63.10(a) of the Commission's rules provide that: (1) carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive a waiver from by the Commission; and (4) carriers that serve an affiliation test nation market solely through the resale of unaffiliated U.S. facilities-based carriers' switched services are presumptively non-dominant for that route. See also Regulation of International Carrier Services, CC Docket No. 91-350, Report and Order, 7 FCC Rcd 7131, ¶ 5 ¶ 19 ¶ 24 (1992).

FN407. See FN1 Aus. 1a, 1996 Comments at 48-71.

FN408. See 47 C.F.R. § 43.51(b) ("no carrier, subscriber or provider of international communications service . . . shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country served . . . and from agreeing to enter into such agreements in the future. . .").

FN409. See 47 C.F.R. § 43.51(d) (to be renumbered 47 C.F.R. § 43.51(d) as provided in Regulation of International Accounting Rates, CC Docket No. 90-177, Third Report and Order and CCID on Reconsideration, 11 FCC Rcd 12498 (ace., May 29, 1996); 47 C.F.R. § 43.100).

FN410. Regulation of International Accounting Rates, CC Docket No. 90-137, Final Report and Order, FCC 96-148 (rel. Dec. 1, 1996) (Accounting Rate Flexibility Order). The FAR requires: (1) the equal division of accounting rates; (2) non-discriminatory treatment of U.S. carriers; and (3) proportionate return of U.S.-bound traffic. The FAR is designed to prevent foreign carriers with market power from obtaining discriminatory accounting rate concessions from competing U.S. carriers. See generally Policy Statement on International Accounting Rate Maximum Policy Statement, 11 FCC Rcd 8206 (rel. Jan. 21, 1996).

FN411. See Accounting Rate Flexibility Order.

FN412. See Note that KCT and BT have requested Commission approval of the transfer of control of BT of Telecom and authorization held by KCT subsidiaries, which would occur as a result of the proposed merger of KCT and BT. See KCT Communications Corporation and British Telecommunications FCC Seek FCC Consent for Proposed Transfer of Control, GN Docket No. 96-246, Public Notice, DA 96-2079 (rel. Dec. 10, 1996).

FN413. See Non-Accounting Safeguards NPPM at ¶ 9 ¶ 18, 51.

FN414. Fourth Report and Order, 65 FCC 2d 576-79, ¶ 9 ¶ 31 56.

FN415. The Commission defines a carrier affiliated with an independent LBC as "a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company."

1997 WL 19363; FCC 95, 12 FCC R. 15,756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 768  
(Publication page references are not available for this document.)

PH423. Report and Order, 95 FCC 2d at 1192, ¶ 9.

PH424. Id.

PH425. Id. at ¶ 5-10.

PH426. Id. at ¶ 5-6.

PH427. Non-Accounting Safeguards NPRM at ¶ 2 ¶ 156-157.

PH428. Id. at ¶ 158.

PH429. Id. at 159.

PH431. GTE Aug. 29, 1996 Comments at 2; SNET Aug. 29, 1996 Comments at 1-2; Citizens Aug. 29, 1996 Comments at 3; Independent Telephone & Telecommunications Alliance (ITTA) Aug. 29, 1996 Comments at 3-4; BATA Aug. 29, 1996 Comments at 11-13; NTCA Aug. 29, 1996 Comments at 6; Independent Coalition (Ind. Coalition) Sept. 13, 1996 Reply at 2.

PH432. Rep. BATA Aug. 29, 1996 Comments at 5-9. See also GTE Aug. 29, 1996 Comments at 15-17; Citizens Aug. 29, 1996 Comments at 16.

PH433. GTE Aug. 29, 1996 Comments at 24-25. See also Sprint Aug. 29, 1996 Comments at 6-7. NTCA asserts that the average size of its members and of IMA borrowers in general is evidence that the companies do not have the ability to leverage size orensive resources to the detriment of rival interexchange carriers. NTCA Aug. 29, 1996 Comments at 3.

PH434. Commenters also point to several other regulatory tools, including: independent audits that assess every year that each class A LEC's books and records conform with all applicable FCC regulations; the ARVTS system; the nondiscriminatory provisions of access to a LEC's facilities through equal access and expanded interconnection; and the Commission's tariff process and complaint procedures. See GTE Aug. 29, 1996 Comments at 16-17; BATA Aug. 29, 1996 Comments at 5-6; NTCA Aug. 29, 1996 Comments at 4; Bell Atlantic Sept. 13, 1996 Reply Comments at 2-3; Ind. Coalition Sept. 13, 1996 Reply Comments at 5-6; ITIA Sept. 13, 1996 Reply Comments at 5-6; Sprint Sept. 13, 1996 Reply Comments at 2; SNET Aug. 29, 1996 Comments at 21-25; Citizens Aug. 29, 1996 Comments at 4-5 and 16.

PH435. GTE Aug. 29, 1996 Comments at 26-27.

PH436. GTE Aug. 29, 1996 Comments at 27.

PH437. GTE Sept. 13, 1996 Reply at 15.

1997 WL 193631 (F.C.C.), 12 F.C.C.R. §5.256, 12 FCC Rep. 15,756, 7 Communications Reg. (Part) 768  
(Publication page references are not available for this document.)

FN425. Sprint Aug. 29, 1996 Comments at 6. Sprint notes that, if this interpretation is incorrect, the Commission may prohibit the sharing or switching and transmission of local access service by interexchange carriers by modifying the local access carrier rules in 47 C.F.R. § §4.301. Sprint Aug. 29, 1996 Comments at 7.

FN426. Teleport Aug. 29, 1996 Comments at 2-3; AT&T Aug. 29, 1996 Comments at 7-10; MCN Aug. 29, 1996 Comments at 7-11. Commonwealth of Northern Mariana Islands (CNMI) also asks the Commission to impose additional safeguards on Micronesia Telephone Company (MTC), which provides telecommunications services in the Commonwealth. MTC is owned by GTE Hawaiian Telephone Company Incorporated (GTE Hawaii) (see fn. 1). CNMI Aug. 29, 1996 Comments at 8.

FN427. Teleport Aug. 29, 1996 Comments at 2-3.

FN428. Teleport Aug. 29, 1996 Comments at 8.

FN429. AT&T Aug. 29, 1996 Comments at 7.

FN430. AT&T Aug. 29, 1996 Comments at 9-10. AT&T notes, for example, that SNET has instituted a "PIC-Feature" which requires a subscriber to contact SNET directly when he or she wishes to switch long-distance carriers. AT&T Aug. 29, 1996 Comments at 10-11.

FN431. AT&T Aug. 29, 1996 Comments at 8.

FN432. AT&T Reply, 14, 1996 Reply at 12.

FN433. NCT Aug. 29, 1996 Comments at 5-7.

FN434. NCI Aug. 29, 1996 Comments at 5-6.

FN435. MCN Reply, 13, 1996 Reply at 8-9.

FN436. SCL Sept. 14, 1996 Reply at 7-8.

FN437. CNMI Aug. 29, 1996 Comments at 2-10.

FN438. GTE Aug. 29, 1996 Comments at 8-10.

FN439. GTE Reply, 14, 1996 Reply at 10-11.

FN440. GTE Sept. 14, 1996 Reply at 10.

1997 WL 193831 (F.C.C.), 12 FCC R. 35,756, 12 FCC Rep. 15,756, 7 Communications Reg. (PMT) 768  
(Publication page references are not available for this document.)

TM444, FTR Sept. 13, 1996 Reply at 19.

TM455, FTR Sept. 13, 1996 Reply at 17.

TM466, CHMI Aug. 15, 1996 Comments at 5-8.

TM477, FTR Sept. 13, 1996 Reply at 16.

TM478, Date integration Order, 12 FCC 256, 2564.

TM480, FTR Sept. 13, 1996 Reply at 16-17; Date Integration Order at 9-69.

TM480, JEA Sept. 13, 1996 Reply at 17.

-4691 See supra ¶ 25.

TM482, See CIE Aug. 29, 1996 Comments at 9; OIA Aug. 29, 1996 Comments at 5, and Statement of Daniel T. Spivack, Northeastern University (Spulber Appendix) at II-22.

TM483, See supra ¶ 9-96.

TM484, Non-Exemption for Services at 9-107.

TM485, See supra ¶ 100.

TM486, See supra ¶ 9-147; See also JEA Aug. 29, 1996 Comments at 5-6; GTS Aug. 29, 1996 Comments at 11-24; Citizens Aug. 29, 1996 Comments at 10.

TM487, See supra ¶ 104.

TM488, Non-Exemption for Services at 9-139.

TM489, See AT&T Aug. 13, 1996 Comments at 65-66; CIE Aug. 13, 1996 Comments at 35; DOJ Aug. 13, 1996 Reply at 64.

TM490, See supra ¶ 111.

TM491, ¶ 5.

TM492, See supra ¶ 122.

1997 WL 197867 (FCC), 12 FCC R. 15,756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&F) 768  
(Publication page references are not available for this document.)

FM463. See supra n. 73.

FM464. See supra n. 127.

FM465. Fifth Report and Order, 98 FCC 3d at 1796, n. 9.

FM466. See infra ¶ 164.

FM467. See FCC Aug. 29, 1996 Comments at 5-7.

FM468. See GTE Sept. 13, 1996 Reply at 15.

FM469. 47 C.F.R. § 51.106(b). See fn 250/11 above as follows:

in availability to other telecommunications carriers. A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 U.S.C. § 250(h).

The Commission's pricing rules and interpretation of section 250(h) are currently under review by the D.C. Circuit Court of Appeals. Iowa Utilities Board v. FCC, No. 96-3401 (D.C. Cir. October 15, 1996) (Order granting stay pending judicial review).

FM470. GTE Sept. 13, 1996 Reply at 15.

FM471. Non-Accounting Safeguards Order at ¶ 312.

FM472. id. at ¶ 312.

FM473. id.

FM474. Interim FCC Out-of-Region order at ¶ 23.

FM475. id.

FM476. Comments Aug. 29, 1996 Comments at 5; GTE Sept. 13, 1996 Reply at 5. See GTE Aug. 29, 1996 Comments at 38-39; see also Oct. 20, 1996 BX Public Letter from Charles D. Conaway, Regional Attorney, GTE, to William Grier, Secretary, FCC at attachment 1. See Interim FCC Out-of-Region Order at ¶ 22.

FM477. See supra ¶ 164.

FM478. Interim FCC Out-of-Region Order at ¶ 23.

1997 WL 193831 (F.C.C.), 12 FCC.R. 15,756, 12 F.C.C. Rep. (A), 15,756, 7 Communications Reg. (P&P) 208  
(Publication page references are not available for this document)

FM479. See *supra* ¶ 146, 602 Aug. 29, 1996 Comments at 25-27.

FM480. Section 205(a) provides as follows:

(c) Federal, State and Local Law. -

(1) No Supplied Effect. This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendment. Telecommunications Act of 1996, Pub. L. No. 104-104, 15 U.S.C. 110 Stat. 55, 145 (to be modified as a rule by owing 47 C.F.R. § 1520).

FM481. Sprint Aug. 29, 1996 Comments at 2-3.

FM482. Sprint Aug. 29, 1996 Comments at 7.

FM483. See *supra* ¶ 163.

FM484. 25.

FM485. See accompanying Safeguards Order at ¶ 205.

FM486. See *supra* ¶ 13, 602, 144.

FM487. See *supra* ¶ 2, 166, 167.

FM488. See *supra* ¶ 9, 152, 153.

FM489. See *supra* ¶ 8, 150, 152.

FM490. See *supra* ¶ 128.

FM491. See *supra* ¶ 130 (noting Phone Interconnection Order at ¶ 9, 724, 731).

FM492. See ACAT Aug. 29, 1996 Comments at 6.

FM493. See ¶ 1 IT(A), in United States v. Westinghouse Elec. Co., 552 F. Supp. 131, 227 U.S.C. (1992) (subsequent history omitted).

FM494. FEC R. 20(F), 573 F. Supp. at 229 and MFL, app. B, 552 F. Supp. at 233.

FM495. 14.

1997) (in 1988) (Dkt. No. 12-100), 12 FCC Rcd. 15,256, 12 FCC Inf. Rep. (Prel.) 768 (Publication page references are not available for this document).

FN496. United States v. SNET Corp., 403 F. Supp. 730 (D.D.C. 1984) (subsequent history omitted).

FN497. MDS and MACS Market Structure Phase T77, CC Bucket No. 75-78, Report and Order, 1000 FCC 91-300, 672-673, § 3, 47-60 (1991) (enforcement history omitted); see also Michael K. Malley et al., *Federal Telecommunications Law* 275-77, § 5.5.1 (1992).

FN498. 47 U.S.C. § 251(f). See n.60 *First Interconnection Order* at ¶ 162.

FN499. See supra n.63.

FN500. We note that on July 24, 1996, NCI filed an informal complaint with the Commission against SNET regarding RBOC-facile disputes. Letter from NCI to John Mulcahy, Chief Enforcement Division, Common Carrier Bureau (July 24, 1996). Informal Complaint No. 1096-09704 requesting the Commission to conclude that SNET's solicitations authorizing SNET to prevent long distance providers from being switched without express consent violate section 251(b) and 251 of the 1996 Act. In addition, on September 27, 1996, SNET filed a letter with the Enforcement Division requesting the Commission to establish procedures under which neutral third parties administer FCC protection. Letter from SNET to John Mulcahy, Chief Enforcement Division, Common Carrier Bureau (Sept. 27, 1996).

FN501. This does not affect the requirement that these providers integrate rates across their affiliates. See Rate Interconnection Order, 11 FCC Rcd 9535 ¶¶ 63.

FN502. 47 U.S.C. § 103(40).

FN503. Rate Interconnection Order, 11 FCC Rcd 9535 ¶ 66.

FN504. Rate Interconnection Order, 11 FCC Rcd 9535 ¶ 68.

FN505. Non-Accounting Safeguards NPRM at ¶ 132.

FN506. 16.

FN507. 47 U.S.C. 251(h)(1), section 251(h)(1) also allows the Commission to provide, by rule, for the treatment of a LEC or category of LECs as incumbent in particular circumstances. 47 U.S.C. § 251(h)(1).

FN508. AT&T Aug. 19, 1996 Comments at 16.

FN509. AT&T Aug. 29, 1996 Comments at 3.

FN510. See, e.g., 47 U.S.C. § 251(c) (imposing additional obligations on incumbent local exchange carriers).

1997. SNET Aug. 29, 1996 Comments at 31-34; AT&T Aug. 29, 1996 Comments at 11-12; NICA Aug. 29, 1996 Comments at 4. NDOA argues that if the Commission does not truly safely eliminate the separation requirements, we should, at a minimum, exempt rural telecommunications companies as defined in the 1996 Act. Id.

1998. NDOA Aug. 29, 1996 Comments at 6; SNET Aug. 29, 1996 Comments at 31-32. SNET, the largest independent LEC in this group, notes that it would be unable to force its long-distance competitors to raise their interstate service prices by more than two tenths of one percent under worst case assumptions. SNET Aug. 29, 1996 Comments at 13 and Attachment 3.

1999. See KTEL Aug. 29, 1996 Comments at 3-4; Sprint Aug. 29, 1996 Comments at 3-4; Independent Coalition Sept. 12, 1996 Reply at 4-5.

2000. See Sprint Aug. 29, 1996 Comments at 4-5.

2001. See Atlantic Sept. 12, 1996 Reply at 3 (arguing that there is no need for continued regulation and that separation requirements should be minimized); SIE Sept. 17, 1996 Reply at 13.

2002. See Sept. 12, 1996 Reply at 14.

2003. Although suggested by several commenters, a rule that exempted all LECs with less than 5 percent of the nation's analog lines would essentially eviscerate our regulation of independent LECs because it would exempt all 1100 independent LECs except the SIE companies (approximately 12 percent) and the Sprint/United companies (approximately 4 percent). Industry Analysis Division, Statistics of Communications Carrier Companies 1996/97, (Chair, Sec. 202, Rev. 1996), Tables 1.1, 2.1, and 2.2.

2004. As previously noted, an independent LEC may seek a waiver of the Part 19 Report and Order requirements on the basis of special circumstances. See supra § 173. We note, however, that a petitioner will face a heavy burden in demonstrating the need for such a waiver.

2005. Non Accounting Ratemaking RRM at ¶ 180.

2006. See, e.g., SNET Aug. 29, 1996 Comments at 11-12; Excel Aug. 15, 1996 Comments at 10.

2007. SNET Aug. 29, 1996 Comments at 40.

2008. SOT Aug. 29, 1996 Comments at 8 (citing MCC Aug. 15, 1996 Comments at 63-71).

2009. Ed. See Order on SOT, #1 Joint Petition, 5 FCC Reg. 1996.

also any other document received by the FOIA office into some electronic form. The FOIA office will keep a copy of the document received from the requester so that it can be provided to the requester if requested. The FOIA office will also keep a copy of the document received from the requester so that it can be provided to the requester if requested.

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997 WL 194831 (FCC), 12 FCC R.R. 15-756, 12 FCC Rel. 15-756, 7 Communications Reg. (P&F) 768  
(Publication page references are not available for this document.)

in the future....").

FN537. See supra ¶ 140; see also ¶ 142.

FN538. The Commission's International Bureau recently granted HTE Hawaiian Tel. a petition for reclassification as a non-dominant carrier in the Hawaiian market for international message telephone service (INTS), subject to implementation by GTE Hawaiian Tel. of the Fifth Report and Order separation requirements which the Bureau imposed on all entities bearing the outcome of this proceeding. Petition of GTE Hawaiian Telephone Company, Inc. for Reclassification as a Non-Dominant INTS Carrier, Order, DA 95-1748 (In, 11 Bus., released Oct. 27, 1995). Our decision here does not modify the International Bureau's determination that GTE Hawaiian Tel. will remain a dominant INTS carrier until it certifies to the International Bureau that it is in compliance with the conditions of that Order. GTE Hawaiian Tel. must comply with the Fifth Report and Order separation requirements, however, within one year from January 1, 1997.

FN539. FN538 (¶ 8 Aug. 24, 1995 Comments at 10 & 12).

FN540. FN538 (Aug. 15 Comments at 10; CPBL Aug. 15 Comments at 12).

FN541. CPBL Aug. 15 Comments at 15.

FN542. See 47 U.S.C. § 270(h) (describing the suspending of section 251); see also Non-Broadcast Safeguards Order at ¶ 9 (¶ 265 271).

FN543. See supra ¶ 141. The three requirements are that an affiliate: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the BOC; and (3) acquire any services from its affiliated exchange company at fair and reasonable terms and conditions. Competitive Carrier Fifth Report and Order, ¶ 252 (fn. at 138, ¶ 3).

FN544. Id.

FN545. 47 U.S.C. § 251(b)(2).

FN546. Internon BOC Cut-off-Region Order at ¶ 15-23. In other words, a BOC would be subject to non-dominant treatment in the provision of self-set-reviewed, intercarrier, crossline, interexchange services if it provided these services through a separate affiliate that satisfied the Fifth Report and Order separation requirements, but would be regulated as dominant if it provided those services directly. Id. at ¶ 3 ¶ 9-25.

FN547. Intercarrier Usage DPPM, 11 FCC Rep. at 7174, ¶ 51.

FN548. See, e.g., Amended April 19, 1995 Comments at 5, May 3, 1995 Reply at 5-7; CTE May 3, 1995 Reply at 8.

PM549. Ameritech May 3, 1996 Reply at 5-6.

PM550. 15.

PM551. FRC April 19, 1996 Comments at 5-9.

PM552. FERC April 19, 1996 Comments at 2.

PM553. FRC May 3, 1996 Reply at 6.

PM554. See, e.g., NYSEB April 19, 1996 Comments at 30; May 3, 1996 Reply at 7-14; 17  
West April 19, 1996 Comments at 15-21; Ameritech April 19, 1996 Comments at 3-13;  
May 3, 1996 Reply at 7-14; Bell Atlantic April 19, 1996 Comments at 3-5; May 3, 1996  
Reply at 7-6; BellSouth April 19, 1996 Comments at 24; GTE April 19, 1996 Comments  
at 1-11; May 3, 1996 Reply at 6-13; FRC April 19, 1996 Comments at 2-7; GTE April  
19, 1996 Comments at 9-26; USIA April 19, 1996 Comments at 8-12; May 3, 1996 Reply  
at 5-7. See also Florida PSC April 18, 1996 Comments at 11-17.

PM555. Ameritech May 3, 1996 Reply at 8 (listing comments on Call for Final Remarks and  
Order, 80 FR 26,19).

PM556. 16.

PM557. See, e.g., Ameritech May 3, 1996 Reply at 8; FRC May 3, 1996 Reply at 8-10.

PM558. See, e.g., NYSEB April 19, 1996 Comments at 13; BellSouth April 19, 1996  
Comments at 36.

PM559. See, e.g., NYSEB April 19, 1996 Comments at 13; BellSouth April 19, 1996  
Comments at 14; GTE April 19, 1996 Comments at 19-21; May 3, 1996 Reply at 8.

PM560. NYSEB April 19, 1996 Comments at 13.

PM561. Ameritech April 19, 1996 Comments at 9-10; May 3, 1996 Reply at 14; Bell Atlantic April 19, 1996 Comments at 4.

PM562. Bell Atlantic April 19, 1996 Comments at 3.

PM563. See, e.g., KPC April 19, 1996 Comments at 8; Missouri Public Service  
Commissioner (MoPSC) April 19, 1996 Comments at 4; CorpOne May 3, 1996 Reply at 6.

PM564. GTE/Tel May 3, 1996 Reply at 6. CorpOne also contends that the Commission  
should treat the BOCs as dominants for out-of-region interexchange services unless

the BOCs provide out-of-region services that are physically and administratively separate and the BOCs do not jointly market local and out-of-region services. Id.

19554. See, e.g., MTS April 19, 1996 Comments at 4; Vanguard Cellular Systems Vanguard April 19, 1996 Comments at 3-5; Alabama BSC April 19, 1996 Comments at 6-7; CSC April 19, 1996 Comments at 1-4; KCI April 19, 1996 Comments at 15-25; May 3, 1996 Reply at 7-13; ComNet May 3, 1996 Reply at 7; Sprint April 19, 1996 Comments at 1-10; TBC April 19, 1996 Comments at 7-9; May 6, 1996 Reply at 5-6; IDBIS May 3, 1996 Reply at 8-9; AT&T May 3, 1996 Reply at 18-19.

19555. Sprint April 19, 1996 Comments at 8-9.

19556. CSC April 19, 1996 Comments at 4.

19557. Alabama BSC April 19, 1996 Comments at 7.

19558. CSC April 19, 1996 Comments at 21-24.

19559. CSC April 19, 1996 Comments at 3-17; CSC April 19, 1996 Comments at 15-17; CSC April 19, 1996 Comments at 3.

19560. CSC April 19, 1996 Comments at 15.

19561. CSC April 19, 1996 Comments at 17.

19562. Vanguard April 19, 1996 Comments at 4.

19563. CSC

19564. CSC, e.g., KCI April 19, 1996 Comments at 18; compiled May 3, 1996 Reply at 7.

19565. CSC April 19, 1996 Comments at 19-19.

19566. CSC, e.g., MTS April 19, 1996 Comments at 18; compiled May 3, 1996 Reply at 7; CSC May 6, 1996 Reply at 9-10; CSC May 3, 1996 Reply at 9-9; AT&T May 3, 1996 Reply at 18-19.

19567. CSC May 3, 1996 Reply at 6-9.

19568. CSC May 3, 1996 Reply at 16-17.

19569. CSC May 3, 1996 Reply at 16.

PX581. See, e.g., Office of the GAO Consumer's Counsel (OGC) April 19, 1996  
Comments at 3; Vanguard April 19, 1996 Comments at 3; Cable & Wireless April 19,  
1996 Comments at 8; CompTel April 19, 1996 Comments at 3; LDOS April 19, 1996  
Comments at 8-10.

PX582. See April 19, 1996 Comments at 3-4; Vanguard April 19, 1996 Comments at 3;  
NFSI, Vanguard April 19, 1996 Comments at 5.

PX583. See, at 7-8.

PX584. See, e.g., CompTel April 19, 1996 Comments at 4; LDOS April 19, 1996 Comments  
at 10-11; Tel April 19, 1996 Comments at 23-25.

PX585. See, e.g., CompTel April 19, 1996 Comments at 4; LDOS April 19, 1996 Comments  
at 14-15; Tel April 19, 1996 Comments at 23-24.

PX587. See, e.g., TIA April 19, 1996 Comments at 23-24; LDOS April 19, 1996 Comments  
at 10-11; Com PUC April 19, 1996 Comments at 4.

PX588. See, e.g., LDOS April 19, 1996 Comments at 11.

PX589. See, e.g., Ohio PUC April 19, 1996 Comments at 4; TIA April 19, 1996 Comments  
at 77-78.

PX590. See *supra* ¶ 96, 157.

PX591. See United States v. Western Bell, 553 F. Supp. at 132-33 (subsequent  
history omitted); United States v. AT&T Corporation, 403 F. Supp. 730, 744 (D.D.C.  
1980) (subsequent history omitted); 805 and 8405 Market Structure, 9C Docket No. 78-  
73, Case 11, 100-00 Ad 860 (1985), recon. denied, FCC 56 L. 59 (ad. reg. Ad 1410  
tel. Jan. 4, 1986). See also 47 U.S.C. § 226(m) (preserving the same access  
regulation and nondiscrimination requirements that applied to local exchange  
carriers on the date of enactment, until such requirements are explicitly superseded  
by the Commission's regulations).

PX592. See *supra* ¶ 91, 160.

PX593. See 47 U.S.C. § 222.

PX594. Bell Atlantic April 19, 1996 Comments at 3.

PX595. See *supra* ¶ 93, 104, 153.

TM601. See 17 C.F.R. § 64.901(b)(1).

TM602. Accounting Safeguards Order at ¶ 75.

TM603. We therefore disagree with XPS' assertion that a BOC's ability to fund non-discriminative pricing schemes in the intrastate market from local exchange carrier profits exists even though those markets are not competitive or because the BOC performs artificial cost allocations.

TM604. See page ¶ 106.

TM605. Under section 41.301(b)(1) of our rules, tariffed services, such as exchange access services, provided to a nonregulated activity must be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service. 47 C.F.R. § 64.901(b)(1). See also 47 C.F.R. § 17.5250 (explaining how carriers must account for the provision of tariffed services to nonregulated activities). As previously noted, out-of-region intrastate services provided by incumbent BOCs on an integrated basis are treated as nonregulated activities for federal accounting purposes. Accounting Safeguards Order at ¶ 75.

TM606. We also note that section 272(e)(1) of the Communications Act requires a RBOC to "charge [to] its section 272 intrastate affiliate[s], or [itself] if using the access for its provision of its own services], an amount for access to its telephone exchange service and switching equipment that is no less than the amount charged to any nonaffiliated interexchange carriers for such services." 47 U.S.C. § 272(e)(1). See also Non Accounting Safeguards Order at ¶ 3 & 176-181 (implementing section 272(e)(1)).

TM607. All BOCs and most of the largest independent LECs are subject to price cap regulation. 1996 Annual Access Tariff Filings, DA 95-1002, ¶ 2 n.2 (rel. June 24, 1996). All but one BOC is subject to price caps without staggering. Data based on 1996 Annual Access Tariff Filings filed on April 1, 1996.

TM608. We acknowledge, however, that some BOCs and independent LECs may market their out-of-region interexchange services to customers who originate terminating calls to BOCs or independent LECs' in-region local exchange and exchange access areas. Bell, Aug., AT&T Sept., 19 Reply, Appendix B.

TM609. Non Accounting Safeguards Order at ¶ 38(h). See also AT&T, Communications Tariff F.C.C. No. 1; TRS Authorize Optional Selling Plan; Revision, Inc. Tariff F.C.C. No. 1; Block-Off-Time Call America, Memorandum Options and Order, 104 FCC 2d 134, 136, ¶ 3 (1985).

TM610. We note, however, that because BOCs and independent LECs are required to offer in-region, interstate, interexchange services through a separate affiliate, some may provide their out-of-region, interstate, interexchange services through the same affiliate rather than directly. We further note that, in the Accounting Safeguards Order, the Commission determined that affiliate transactions rules apply to all transactions between incumbent local exchange carriers and their affiliates providing any of the competitive services of the types permitted under section 269.

1997 WL 197851 (F.C.C.), 12 F.C.C.R. 15,756, 17 FCC Rep. 15,156; Communications Reg. (P&E) 768 (Publication page references are not available for this document)

and 271 through 275, Telecommunications Safeguards Order at ¶ 256.

FN606. DCA April 19, 1996 Comments at 3-4; Vanguard April 19, 1996 Comments at 5.

FN607. See, e.g., Comptel April 19, 1996 Comments at 4; TDS April 19, 1996 Comments at 10; DCA April 19, 1996 Comments at 22-24; CH2O PUC April 19, 1996 Comments at 4.

FN608. FCC Out of Region Interim Order at ¶ 19.

FN609. FCC Report at 170.

FN610. With respect to cable independent LBOs, we note that this decision may promote their expansion into new telecommunications services and information services consistent with section 252 of the Act. See 47 U.S.C. § 252.

FN611. Interexchange NRRM at ¶193-94; § ¶ 183 Title Non-Accounting Retayards NRRM at ¶ 165.

FN612. Pub. L. No. 104-171, 110 Stat. 547 (1996); title II of the CDAAA is "The Title II Business Regulatory Enforcement. No. these Act of 1996." Section at § 113(c)(5) of SEC.

FN613. S. Conf. Rep. No. 243, 104th Cong., 2d Sess. 1 (1996).

FN614. Id.

FN615. Interexchange NRRM at ¶194; § 50.

FN616. Non Accounting Retayards NRRM at ¶ 148.

FN617. Id. at ¶ 85.

FN618. DCA April 29, 1996 Comments at 5.

FN619. Id.

FN620. Pub. at § 101(f)(3)(B), 4 (21-107(h)).

FN621. Id. at 6.

FN622. Id. at 5.

FN623. See, e.g., Implementation of the Local Competition Provisions in the 1996 Telecommunications Act of 1996, CC Docket No. 96-66, First Report and Order, 12 FCC Rep. 15439 (1996); Citing Expanded Interconnection with Local Telephone Company Facilities, Supplemental Notice of Proposed Rulemaking, 6 FCC Rep. 1809 (1995); BSC and MTA Market Structure, Report and Order, 3 FCC Rep. 2353, 2359 (1995) (citing BSC and MTA Market Structures, Third Report and Order, §§ 7.C.01a-d 291, 335-39 (1995)).

FN624. See, e.g., Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rep. 7493, 7498 (1995).

FN625. WMA Aug. 29, 1995 Comments at 5.

FN626. As discussed in ¶ 179 *supra*, for purposes of this Order we accept the definition of "independent LSC" in section 251(b).

FN627. See 13 CFR, § 121.201 (SIC 4513).

FN628. See 13 CFR, Small Business Competitive Act, 140, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155 (holding that an agency may properly certify that no regulatory "certainty analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," and rejecting SBA's argument that the RFA is intended to apply to all rules that affect small entities, whether the small entities are directly regulated or not).

FN629. See 13 CFR, § 121.201 (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 6101).

FN630. 13 CFR, Small Business Act.

FN631. 13 CFR, § 121.201.

FN632. Federal Communications Commission, CMB, Industry Analysis Division, Telecommunications Terminal Revenue: TRS Fund Workload Data, Tab. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (Dec. 1996) (TRS worksheet).

FN633. 13 CFR, § 121.201.

FN634. See 13 CFR, § 1202.

FN635. TRS worksheet.

FN636. While the Commission has not prescribed a definition for the term "CMB," it

is generally not used to refer to companies that provide local exchange services.

PN607. Tariff Filing Requirements for Non-Dominant Carriers. CC Docket No. 95-36, Order on Remand, 13 FCC Rcd 13,053 (1995). As discussed in note 8 *supra*, the Commission recently determined, pursuant to section 10 of the Communications Act, to forbear from requiring non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. The Commission therefore ordered, inter alia, non-dominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within a nine-month transition period and not to file any such tariffs thereafter. Tariff Forbearance Order at ¶ 9 (9-9-95), stayed pending judicial review, MCI Telecom. Corp. v. FCC, No. 95-1439 (D.C. Cir. Feb. 13, 1997). See also Policy and Policy Concerning the Interstate Interexchange Marketplace: Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit, CC Docket No. 96-31, Public Notice, DA 97-193 (rel. March 6, 1997).

PN609. See *et al.* F.C.C., 6-6-03-7, 95-27141.

PN610. Fifth Report and Order, 95-2024, 11-95, 5-2. For purposes of these requirements, an "affiliate" of an independent LEC is "a carrier that is owned (in whole or in part) or controlled by, or under common control with, an exchange telephone company." *Id.*

PN640. Rule 0.004(f)(7C).

PN641. See *et al.*, Tariff Forbearance Order; Non-Accounting Safeguards Order.

#### APPENDIX A

##### List of Commenters in CC Docket No. 95-124

###### Comments from:

Administrator for Local Telecommunications Services (ALTS)

Association of Directory Publishers (ADP)

Association of Telemessaging International (ATI)

ATT&T Corp., NYNII

Bell Atlantic Telephone Companies (Bell Atlantic)

Bell Communications Research, Inc. (Bellcore)

BellSouth Corporation (BellSouth)

California Cable Television Association (CCTA)

California Public Utilities Commission (California Commission)

Catalyst Health

Citizens for a Sound Economy Foundation

Citizens' Utilities Companies

Commercial Internet Exchange Association (CIX)

Commonwealth of the Northern Mariana Islands

Competitive Telecommunications Association (Competel)

Computer Technology Institute

Excel Telecommunications, Inc. (Excel)

Exco Systems Inc.

Federal Public Service Commission (Federal Commission)

Frontier Corporation (Frontier)

GTE Services, Inc. (GTE)

GTE Service Corporation (GTE)

Hanover United Bank, Inc.

Independent Data Communications Manufacturers Association (IDCOMA)

Independent Coalition

Independent Telephone & Telecommunications Alliance (ITCA)

Information Technology Association (ITA)

Information Technology Association of America (ITAA)

Information Technology Industry Council (ITIC)

Intercity Services Association (ISA)

ICSI International Communications Corp. (ICSI)

ISPS Worldcom Inc. (ISPS)

ITC Telecommunications Corporation (ITC)

ITS Communications Company, Inc. (ITS)

Michigan Public Service Commission (Michigan Commission)

Missouri Public Service Commission (Missouri Commission)

Subject:

National Association of Regulatory Utility Commissioners (NARUC)

National Cable Television Association, Inc. (NCTA)

National Telephone Cooperative Association (NTCA)

New Jersey Division of the Public Utility Advocate (New Jersey Rate Payer Advocate)

1997 WL 193631 (F.C.C.), 12 FCC R.R. 15,756, 12 FCC Rcd. 15,756, 7 Communications Reg. (P&D) 768  
(Publication page references are not available for this document.)

New York State Department of Public Service (New York Commission)

NYNPA, Inc., telephone Companies (NYNPA)

Owner's & Master

Pan American Telesis Group (PanTel)

PANX Bank, N.A.

Petroleum Telephone

Public Utilities Commission of Ohio

USC Communications Law, Inc. (SPPI)

Radio Light Systems

Renaissance New England Telephone Company (RNET)

Spacelink Corporation (Spacelink)

Telecommunications Industry Association (TIA)

Telecommunications Retailers Association (TRA)

Telmex S.A. de C.V. (Mexico City, Mex. (TLD))

Telephone Communications Group, Inc. (Teleport)

Temple University

Time Warner Cable (Time Warner)

USC-BI Cities, Inc.

United States Telephone Association (USTA)

U.S. Department of Justice (DOJ)

U.S. West

VoiceNet

West Virginia Dept. of Administration

Wisconsin Public Service Commission (Wisconsin Commission)

Yellow Pages Publishers Association (YPPA)

List of Commenters in CC Docket No. 96-61, Phase --

Alabama Public Service Commission, (Alabama PSC)

AJTEC Corporate Services, Inc.

Associate Premiers Telecommunications Association (APTA)

American Broadcast Institute (ABI)

American Public Communications Council (APCC)

Amantech

AMSC Subsidiary Corporation (AMSC)

AT&T Corp. (AT&T)

Bell Atlantic Telephone Companies (Bell Atlantic)

Bell South Corp. (BellSouth)

Bell & Wisconsin, Inc. (Cable & Wireless)

Belzona Utility Inc. Company (Belzona Utilities)

Columbia Long Distance Services, Inc. (CLDS)

Competitive Telecommunications Association (ComTel)

Commonwealth of the Northern Mariana Islands

Florida Public Service Commission (Florida PSC)

Frontier Services

Frontier Corporation (Frontier)

General Communication, Inc. (GCI)

General Services Administration (GSA)

GTE Services Corp. (GTE)

Governor of Guam & the Guam Telephone Authority

Guam Public Utilities Commission (Guam PUC)

Harvey William Mark (Harvey)

Iowa Telephone Co.

IT&T Telecommunications, Inc.

JAMA Corporation

John S. Gualakis, Inc.

Karen Leffler (Leffler)

Kristine Stark (Stark)

LBBG Worldwide (LBBG)

Louisiana Public Service Commission (Louisiana PSC)

MCI

MIS

Michael Schmid (Schmid)

Missouri Public Service Commission (Missouri PSC)  
National Association of Regulatory Utility Commissioners (NARUC)  
New York State Department of Public Service  
Nynex Telephone Companies (Nynex)  
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)  
Pacific Telesis Group (PacTel)  
Paul Lee Neal  
PCC Communications, Inc.  
Peggy Vail (Savant)  
Pennsylvania Office of Consumer Protection  
Pennsylvania Public Utility Commission (Pennsylvania PUC)  
Public Utilities Commission of Ohio  
Rideau Telephone Coalition  
Schuler Communications Group  
SBC Communications, Inc. (SBC)  
Southwest Bell Telephone Company (SWBell)  
Special Corporation (Sprint)  
State of Alaska (Alaska)  
State of Hawaii (Hawaiian)  
TCA, Inc.  
US Telecommunications Corp.  
Telecommunications Resellers Association (TRA)  
United States Telephone Association (USTA)  
U.S. West, Inc. (U.S. West)  
Vanguard Cellular Systems, Inc.  
Washington Utilities & Transportation Commission  
Verizon Business Network (ZBT)

APPENDIX B Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

246. Part 64 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

**PART 64 MISCCELLANEOUS RATES RELATING TO COMMON CARRIERS**

**Subpart G - Separate Affiliate Requirements For Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services Or In-Region International Interexchange Services**

Sec.

44.1901 **Scope and purpose.**

44.1902 **Terms and definitions.**

44.1903 **Obligations of a local independent independent local exchange carriers.**

**Subpart H - Separate Affiliate Requirements For Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services Or In-Region International Interexchange Services**

A 44.1901 **Basic and purpose.**

(a) Basic. These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of these rules is to regulate the provision of in-region, interstate, domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers.

B 44.1902 **Terms and definitions.**

Terms used in this part have the following meanings:

**Books of Account.** Books of account refer to the financial accounting system a company uses to record, in monetary terms, the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

**Independent Local Exchange Carrier (Independent LEC).** An independent local exchange carrier or local exchange carrier, including RBOCs, other than the BOCs.

**Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC).** The term **incumbent independent local exchange carrier** means, with respect to an area, the independent local exchange carrier that: (1) on February 8, 1996, provided telephone exchange service in such area; and (2) (i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(f) of this title; or (ii) is a person or entity that, on or after February 8, 1996, became a successor in session of a member described in clause (i) of this paragraph. The Commission may also, by rule, treat an independent local exchange carrier as an

independent local exchange carrier pursuant to section 251(a)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or RBOC service areas, or service, or their equivalents that: (1) terminate in the independent LEC's local exchange areas, and (2) allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Telephone Carrier. The local local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person, to the extent such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

#### 3. 66,1900 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (b) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

(i) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 12 of this title;

(ii) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel, or other resources or assets with an affiliated exchange company; and

(iii) The affiliate shall acquire any services from its affiliated exchange companies for which the RBOC local exchange companies are required to file a tariff at specified rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 251 of the Communications Act of 1934, as amended.

(b) The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its RBOC local exchange companies, housed in existing offices of the RBOC local exchange companies, and use the affiliated exchange companies' marketing and other services, subject to paragraph (a)(3) of this section.

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to February 1, 1998, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of January 1, 1997 shall comply with the requirements of this section no later than January 1, 1998.

April 16, 1997

Supersede statement by Commissioner Susan Ness

See: Regulatory Treatment of IBO Provision of Interexchange Services Originating in the BOC's Local Service Areas; Policy and Rules Concerning Interstate, Interexchange Markups; see:

Good government requires knowing when to intervene, and when to stay back. Today, we step back from a market segment where active regulation would do more harm than good.

Our order today clarifies the circumstances under which the interstate interexchange services of local exchange carriers will be treated as "inconsequential," i.e., specifying the conditions under which the local telephone company, including the toll companies, can provide interstate, interexchange services free of requirement for cost surcharge sets, separate review of tariff charges, and other trappings of dominant carrier regulatory status.

In making our determination of nonconformance, we are not blinking at the market power possessed by local exchange carriers. To the contrary, we will continue to draw on our rules and our regulatory resources on controlling, and ultimately disengaging, that market power. That means directing our attention to the services and facilities where local carrier market power -- i.e., local exchange and backbone access services -- and policing the relationship between the operating companies and their interexchange affiliates. So long as these markers are properly attended to, as contemplated by our interconnection and franchise separation rules, dominant carrier regulation of the interexchange services themselves would be unnecessary and possibly counterproductive.

997 WL 193831 (F.C.C.), 12 FCC R.R. 15,756, 12 FCC Rep. 15,756, 7 Communications Reg. (P&P) 768

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